IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

No. 78-807

PLEASURE DRIVEWAY AND PARK DISTRICT OF PEORIA, ILLINOIS, an Illinois Political Subdivision, JOHN R. CANTERBURY, JAMES A. CUMMINGS, BONNIE W. NOBLE, CLYDE WEST, HAROLD A. (PETE) VONACHEN, JR., Individually and Members of the Board of Trustees of the Pleasure Driveway and Park District of Peoria; RHODELL E. OWENS, Individually and as Director of Parks and Recreation; JACK M. FULLER, Individually and as Administrative Assistant; DANIEL B. OHLEMILLER, Individually and as Business Administrator; FRANK D. BORROR, Individually and as Superintendent of Maintenance; WILLIAM McD. FREDERICK, Individually and as Attorney of Pleasure Driveway and Park District of Peoria,
Petitioners,

v.

WILLIAM KUREK, WALTER DURDLE, ROBERT TOGIKAWA, EDWIN JONES and RICHARD HOADLEY,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITIONERS' REPLY TO RESPONDENTS' BRIEF IN OPPOSITION

W. McD. FREDERICK
WILLIAM V. ALTENBERGER
JULIAN E. CANNELL
700 Commercial National Bank Building
Peoria, Illinois 61602
Attorneys for Petitioners

KAVANAGH, SCULLY, SUDOW,
WHITE & FREDERICK
Of Counsel

St. Louis Law Printing Co., Inc., 812 Olive Street 63101 314-231-4477

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

No. 78-807

PLEASURE DRIVEWAY AND PARK DISTRICT OF PEORIA, ILLINOIS, an Illinois Political Subdivision, JOHN R. CANTERBURY, JAMES A. CUMMINGS, BONNIE W. NOBLE, CLYDE WEST, HAROLD A. (PETE) VONACHEN, JR., Individually and Members of the Board of Trustees of the Pleasure Driveway and Park District of Peoria; RHODELL E. OWENS, Individually and as Director of Parks and Recreation; JACK M. FULLER, Individually and as Administrative Assistant; DANIEL B. OHLEMILLER, Individually and as Business Administrator; FRANK D. BORROR, Individually and as Superintendent of Maintenance; WILLIAM McD. FREDERICK, Individually and as Attorney of Pleasure Driveway and Park District of Peoria,
Petitioners,

v.

WILLIAM KUREK, WALTER DURDLE, ROBERT TOGIKAWA, EDWIN JONES and RICHARD HOADLEY,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITIONERS' REPLY TO RESPONDENTS' BRIEF IN OPPOSITION

ARGUMENT

Petitioners contend that this case presents this Court with the unique opportunity to reconcile "the conflict between the countervailing purposes of collateral estoppel and exclusive

federal jurisdiction", and the issue "left unresolved" in *City of Lafayette, La. v. La. Power & Light Co.*, — U.S. —, 98 S.Ct. 1123 (1978), as to the type and scope of state mandates sufficient to immunize a unit of local government from federal antitrust laws. Respondents' Brief in Opposition implicitly attempts to divert this Court's attention from the significance of those issues. Instead they have attempted to focus the Court's attention on the details of only one of the lengthy and protracted state proceedings while ignoring the other state proceedings and determinations which decided the essential facts. While such argument would, we believe, be more fully and properly made and considered in the full argument of the case, should this Court grant the Petition for Writ of Certiorari, we file this reply to Respondents' Brief in Opposition for the purposes of indicating to this Court the matters contained in Respondents' Brief which misconstrues Petitioners' position.

Prior state court determinations of essential facts which were fully litigated should be given preclusive effect in subsequent federal cases. [Petition, Part I].

The state court damage decisions upon which Petitioners primarily rely [App. K and M] did in fact contain every allegation of fact necessary to decide and essential to the issues in these proceedings and determined them. The golf pros by their attorney stated at the September 24, 1975 hearing in the trial of the damage action:

> "Mr. Cassidy: But I have a better suggestion. Every fact essential to the ultimate determination of the Court controversies, and I would consider forcible entries and monopolies and fraudulent interferences, has been raised now by these affirmative defenses, and as a matter of law and, this is a pretty nice question, like Parker v. Brown, that could have a terrible impact on a Federal proceeding, is that if ever a case was in a posture, the Complaint in [sic] the Affirmative Defenses are in a posture, supported by those exhibits which are all Judicial documents. As of this moment, for an Order that the Appeal should not be delayed because why should we spend one more hour at the Trial Court level or in the Court of original jurisdiction, taking more evidence, hearing more arguments, etc., when these six defenses, together with their claim could resolve the whole controversy once and for all, constitutes an anticipatory appeal and it resolves all questions of law and we could, with alacrity, after an appeal, I am sure, dispose of questions of damage, even in pending controversies . . ."

As an additional admission of the completeness of that decision, the golf pros' motion [Petition, App. p. A-87] stated that the matters and things contained in that damage action and decision were the same as those before the Seventh Circuit Court of Appeals in this matter in order that the Third District Appellate Court consider the Seventh Circuit Court of Appeals opinion and reverse the state court decision. That motion further stated:

> "(a) The trial court in this case rejected defendants' affirmative antitrust defenses [as to Illinois Antitrust Act] and Exhibit A hereto [Seventh Circuit Opinion] holds that the Park District is indeed subject to liabilities to the antitrust laws.
>
> (b) The trial court in this case measured defendants' liability under the complaint on the basis of what is referred to in Exhibit A hereto, *inter alia*, as follows: 'that GSM made an economically unrealistic "sham" proposal, not actually to be put into effect'. . . .
>
> 4. Furthermore, the opinion of the 7th Circuit with regard to the employment termination [Exhibit A, pp. 20-23] should be considered by this court with regard to the judgment on review or the counterclaim involving the ***same subject matter*** . . ."

The Third District Appellate Court after permitting the filing of the Seventh Circuit Court of Appeals opinion as additional authority stated:

> "From a review of defendants' brief in this cause of which the Circuit Court of Appeals was unaware, all the reasons why defendants discharge should be considered wrongful were or could have been urged and resolved in the case before the Circuit Court of Peoria County." [Petition, App. p. A-83].

The Third District Appellate Court also stated in that opinion:

> "However, in their motion to add as additional authority the opinion of the 7th Circuit Court of Appeals previously referred to, defendants argue that since the 7th Circuit Court of Appeals has decided that the plaintiff may be subject to damages for antitrust violations, we should reverse the trial court's dismissal of defendants' affirmative antitrust defenses. We decline to do so. Having failed to initially allege and argue the dismissal of the antitrust defense, defendants have waived whatever assignment or error they might have had to that dismissal. . . ." [Petition, App. p. A-79]

While Petitioners refer to the state court decision in the original forcible entry and detainer case [Petition, p. 13 and App. J] as having determined that the golf pros' contract rights and rights to possession had ended as a matter of law on December 31, 1973, Respondents' claim that we "primarily relied upon" that decision [Respondents' Brief, p. 5] is incorrect. The Petitioners primarily rely on the state court determinations in the damage cases which were separate and distinct from the forcible entry and detainer case. The records in the damage proceedings [Petition, App. K and M] show that the Respondents raised several affirmative defenses and voluntary counterclaims in addition to and in defense of the issues relating to

the damages suffered by the Park District. The determinations necessarily made by the state courts on those issues and in those proceedings included: 1) that the alleged "sham" contract was a valid, arms-length contract, arrived at through open competitive bidding, consistent with the clear public policy of state laws, [App. K and M]; 2) that the alleged "sham" contract was a measure of the fair value of the premises and/or licenses for the concession rights, [App. K and M]; 3) that the alleged "sham" contract was neither an illegal sales tax nor an attempt to punish the pros [App. K and M]; and 4) that the golf pros' employment rights were properly terminated in accord with the published policies of the Park District and did not violate the golf pros' civil rights [App. K and M].

While the forcible entry case [Petition, App. J] determined the important question as to the termination of the Respondents' contract rights, as a matter of law, on December 31, 1973, it is the state court damage cases [Petition, App. K and M] which determined the facts listed above which should be given preclusive effect. In both cases the Illinois Supreme Court denied Respondents' Petition for Leave to Appeal and no further appeals were attempted to this Court.

Apparently Respondents admit that the claims made in the state court damage action were voluntarily filed, but contend [Respondents' Brief, pp. 8 and 10] that the claims were strictly limited to "tortious interference". Petitioners contend that under the doctrine of issue preclusion, collateral estoppel, or *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923), and its progeny,[1] the factual determinations in these voluntarily advanced claims of the golf pros in prior state court adversary, evidentiary hearings bar further consideration by federal courts of the specific issues determined therein and the golf pros civil rights claims under Count II of the Complaint.

---

[1] See Petition Footnote 5 for further explanation.

II

As to Respondents' argument made in Part II of their Brief, Petitioners contend that the Court of Appeals erred in their application or reconsideration in light of *City of Lafayette, La. v. La. Power and Light Co.*, — U.S. —, 98 S.Ct. 1123 (1978). The Respondents make no argument as to whether the provisions of the Illinois Competitive Bidding Act and the Park District Code [Petition, App. Q, pp. A-109-A-111] are the type of state mandate or directive which this Court included in the holding in the *City of Lafayette* case. We contend that the Court of Appeals did not concern itself with that issue and that the failure in light of the *City of Lafayette* case to consider the essential ingredients of state mandate or directive was error, and leads to aberrational results never intended by this Court.

CONCLUSION

For the foregoing reasons, the Petitioners respectfully request that the Petition for Writ of Certiorari be granted and that this Court fully review the issues herein, reaffirm the district court and reverse the Court of Appeals decision.

Respectfully submitted,

W. McD. FREDERICK
WILLIAM V. ALTENBERGER
JULIAN E. CANNELL
Attorneys for Petitioners

KAVANAGH, SCULLY, SUDOW,
WHITE & FREDERICK
700 Commercial National Bank Building
Peoria, Illinois 61602
Dated: December 13, 1978